

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

CARL O. THORNBURGH, )  
Petitioner, )  
vs. ) Case No. 16-03026-CV-S-ODS  
UNITED STATES OF AMERICA, ) Crim. No. 04-CR-3064-01-S-ODS  
Respondent. )

**ORDER GRANTING (1) PETITIONER'S MOTION FOR RECONSIDERATION, AND (2)**  
**VACATING COURT'S ORDER DATED JUNE 14, 2016**

Earlier this year, Petitioner Carl Thornburgh sought to vacate his sentence pursuant to *Johnson v. United States*, 1345 S. Ct. 2551 (2015), which held the Armed Career Criminal Act's ("ACCA") residual clause is unconstitutional. Doc. #5. The Government opposed Petitioner's motion, arguing his sentence was still proper under other provisions of the ACCA. Doc. #12. On June 14, 2016, the Court denied Petitioner's motion based upon the law of the Eighth Circuit at that time. Doc. #15.

On June 23, 2016, the Supreme Court issued its decision in *Mathis v. United States*, 136 S. Ct. 2243 (2015). The Supreme Court reversed the Eighth Circuit's finding that the Iowa second degree burglary conviction did not qualify as a predicate offense under the ACCA. *Id.* at 2253. On August 29, 2016, Petitioner filed a "Reply to Government's Response Opposing Motion to Vacate Sentence" (Doc. #16), which the Court construed as a Motion for Reconsideration. Doc. #17.

In response to Petitioner's motion, the Government waived any objection to the timeliness of Petitioner's motion, and conceded Petitioner should be resentenced. Doc. #18, at 2. Accordingly, Petitioner's motion for reconsideration is granted, and the Court finds Petitioner is entitled to relief under 28 U.S.C. § 2255. The Court's Order dated June 14, 2016 is vacated. Consistent with this Order, the Court will schedule a hearing for resentencing.

IT IS SO ORDERED.

/s/ Ortrie D. Smith  
ORTRIE D. SMITH, SENIOR JUDGE  
UNITED STATES DISTRICT COURT  
DATE: September 16, 2016